

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7367) DISMISSAL AND
6 Anthony J. Brindisi) CASE CLOSURE UNDER THE
7 Brindisi for Congress) ENFORCEMENT PRIORITY
8 and Jennifer May, as Treasurer) SYSTEM
9 Friends of Anthony J. Brindisi)
10 and Lorraine McGovern, as Treasurer)
11)
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13 **GENERAL COUNSEL'S REPORT**

14 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
15 basis to allocate its resources and decide which matters to pursue. These criteria include, without
16 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
17 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
18 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
19 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
20 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
21 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
22 discretion to dismiss cases under certain circumstances.

23 The Office of General Counsel has scored MUR 7367 as a low-rated matter and has
24 determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the
25 reasons set forth below, we recommend that the Commission dismiss the allegations that Anthony J.
26 Brindisi,² Brindisi for Congress and Jennifer May, in her official capacity as treasurer ("the Federal

¹ The EPS rating information is as follows:
June 15, 2018.

Complaint Filed: April 17, 2018. Response Filed:

² Anthony Brindisi is a U.S. House candidate for New York's 22nd Congressional District, and Brindisi for Congress is his principal campaign committee; the committee was established in June 2017. Brindisi has been a member of the New York State Assembly since September 2011, and currently represents the 119th Assembly District. Friends of Anthony J. Brindisi is the principal campaign committee for Brindisi's state campaign.

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1 Committee”), and Friends of Anthony J. Brindisi and Lorraine McGovern, in her official capacity as
2 treasurer (“the State Committee”), violated the Act or Commission regulations, and remind the
3 Federal Committee and the State Committee of the regulation prohibiting the transfer of funds from a
4 candidate’s non-federal committee to his or her federal committee.

5 The Complaint alleges that Brindisi made donations from his State Committee to Democratic
6 committees, and the State Committee disclosed two \$1,000 contributions to the Federal Committee,
7 but the Federal Committee did not report receiving them.³ Respondents state that the Federal
8 Committee disclosed the contributions from the State Committee in its reports filed with the
9 Commission.⁴ Respondents also state that these contributions were within the Act’s limits and
10 contained only federally permissible funds.⁵

11 The Act and Commission regulations prohibit a federal candidate from soliciting, receiving,
12 directing, transferring or spending funds in connection with a federal campaign unless the funds are
13 in amounts and from sources permitted by the Act.⁶ Further, Commission regulations prohibit the
14 transfer of funds from a candidate’s nonfederal campaign committee to his or her federal
15 committee.⁷

16 The Federal Committee’s reports reveal that the State Committee made two \$1,000
17 contributions to the Federal Committee, which accepted them. As federal candidates are prohibited

³ Compl. at 1 (Apr. 17, 2018).

⁴ Resp. at 1-2 (June 15, 2018). *See also* Brindisi for Congress 2017 October Quarterly at 193, available at <http://docquery.fec.gov/pdf/854/201710139075643854/201710139075643854.pdf>, and Brindisi for Congress 2018 April Quarterly at 396, available at <http://docquery.fec.gov/pdf/665/201804159108235665/201804159108235665.pdf>.

⁵ Resp. at 2 n.6; *see* 52 U.S.C. § 30116(a)(1)(A), 11 C.F.R. § 110.1.

⁶ 52 U.S.C. § 30125(e)(1).

⁷ 11 C.F.R. § 110.3(d).

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1 from transferring funds from their state committees to their federal committees, the State Committee
2 should not have made the contributions, and the Federal Committee should not have accepted them.

3 Since the amount at issue is *de minimis*, we recommend the Commission exercise its
4 prosecutorial discretion and dismiss the allegations as to all Respondents.⁸ Additionally, this Office
5 recommends that the Commission remind the State Committee and the Federal Committee of the
6 prohibition at 11 C.F.R. § 110.3(d).⁹ We also recommend that the Commission approve the attached
7 Factual and Legal Analysis, close the file as to all Respondents, and send the appropriate letters.

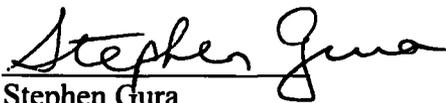
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9 **RECOMMENDATIONS**

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11 1. Dismiss the allegations that Anthony J. Brindisi, Brindisi for Congress and Jennifer May,
12 in her official capacity as treasurer, or Friends of Anthony J. Brindisi and Lorraine
13 McGovern, in her official capacity as treasurer, violated the Act and Commission
14 regulations, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985);
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16 2. Remind Brindisi for Congress and Jennifer May, in her official capacity as treasurer, and
17 Friends of Anthony J. Brindisi and Lorraine McGovern, in her official capacity as
18 treasurer, of the prohibition on transfers from a candidate's nonfederal committee to his
19 or her principal or authorized federal committee;
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21 3. Approve the attached Factual and Legal Analysis and the appropriate letters; and
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23 4. Close the file as to all Respondents.

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26 Lisa J. Stevenson
27 Acting General Counsel

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29 Kathleen M. Guith
30 Associate General Counsel

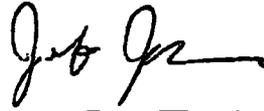
31 10.16.18
32 _____
33 Date

34 BY: 
Stephen Gura
Deputy Associate General Counsel

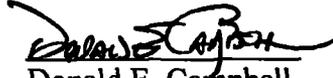
⁸ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). The Complaint also makes allegations that Brindisi was "using money" to attend "events" that he was attending as congressional candidate. We likewise recommend the Commission dismiss this allegation because it is vague and unsupported. *Id.*

⁹ The reminder letter will also advise that the Federal Committee to refund the two contributions received from the State Committee.

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Jeff S. Jordan
Assistant General Counsel



Donald E. Campbell
Attorney

Attachments:

1. Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

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3 RESPONDENTS: Anthony J. Brindisi MUR 7367
4 Brindisi for Congress
5 and Jennifer May, as treasurer
6 Friends of Anthony J. Brindisi
7 and Lorraine McGovern, as treasurer
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9 **I. INTRODUCTION**

10 This matter was generated by a complaint alleging violations of the Federal Election
11 Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Anthony J.
12 Brindisi, Brindisi for Congress and Jennifer May, in her official capacity as treasurer (“the
13 Federal Committee”), and Friends of Anthony J. Brindisi and Lorraine McGovern, in her official
14 capacity as treasurer (“the State Committee”). It was scored as a low-rated matter under the
15 Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to
16 allocate its resources and decide which matters to pursue.
17

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Factual Background**

20 The Complaint alleges that Brindisi made donations from his State Committee to
21 Democratic committees, and the State Committee disclosed two \$1,000 contributions to the
22 Federal Committee, but the Federal Committee did not report receiving them.¹ Respondents
23 state that the Federal Committee disclosed the contributions from the State Committee in its

¹ Compl. at 1 (Apr. 17, 2018).

1 reports filed with the Commission.² Respondents also state that these contributions were within
2 the Act's limits and contained only federally permissible funds.³

3 **B. Legal Analysis**

4 The Act and Commission regulations prohibit a federal candidate from soliciting,
5 receiving, directing, transferring or spending funds in connection with a federal campaign unless
6 the funds are in amounts and from sources permitted by the Act.⁴ Further, Commission
7 regulations prohibit the transfer of funds from a candidate's nonfederal campaign committee to
8 his or her federal committee.⁵

9 The Federal Committee's reports reveal that the State Committee made two \$1,000
10 contributions to the Federal Committee, which accepted them. As federal candidates are
11 prohibited from transferring funds from their state committees to their federal committees, the
12 State Committee should not have made the contributions, and the Federal Committee should not
13 have accepted them.

14 Since the amount at issue is *de minimis*, the Commission exercises its prosecutorial
15 discretion and dismisses the allegations as to all Respondents,⁶ and reminds the State Committee
16 and the Federal Committee of the prohibition at 11 C.F.R. § 110.3(d).

² Resp. at 1-2 (June 15, 2018). *See also* Brindisi for Congress 2017 October Quarterly at 193, available at <http://docquery.fec.gov/pdf/854/201710139075643854/201710139075643854.pdf>, and Brindisi for Congress 2018 April Quarterly at 396, available at <http://docquery.fec.gov/pdf/665/201804159108235665/201804159108235665.pdf>.

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⁴ 52 U.S.C. § 30125(e)(1).

⁵ 11 C.F.R. § 110.3(d).

⁶ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). The Complaint also makes allegations that Brindisi was "using money" to attend "events" that he was attending as congressional candidate. The Commission dismisses this allegation because it is vague and unsupported. *Id.*